

## **REMARKS**

### **AMENDMENTS TO THE SPECIFICATION**

Paragraphs [0016], [0040], [0046], [0059], [0061], [0062], [0063] and [0064] have been amended to correct obvious typographical errors. As such, the instant amendments do not constitute new matter.

### **AMENDMENTS TO THE CLAIMS**

Claim 16 has been cancelled without prejudice.

Claims 1 and 9 have been amended to make clearer the invention claimed by the applicants. In more particular, these amendments further describe the implemented video transition as being a video transition effect. Additionally, Claim 1 has been amended to make clearer that the synchronisation process of the instant invention is implemented by modifying only the time duration of an applied video transition effect. As is clearly indicated in, for example, paragraph [0037] of the instant invention, the use of video transition effects was fully considered and taught by the instant inventors and, as such, these amendments do not constitute new matter.

Claim 15 has been amended, to bring this particular claim in conformance with the independent claim (Claim 9) from which it depends. The amendments describe the video transition as being a video transition effect and as having at least one transition effect parameter. Support for these amendments can be found throughout the specification of the instant invention,

including, for example, paragraphs [0037] and, as such, these changes do not constitute new subject matter.

Claim 17 has been amended to depend from independent Claim 9 and to further describe the different types of selectable video transition effects. These changes do not constitute new subject matter since they only change the dependency of the claim and bring the claim in conformance with the independent claim from which it depends.

New Claims 18 - 20 have been added to reflect more clearly the invention that the applicants claim as their own. The use of multiple criteria for selecting markers is discussed, - among other locations, at paragraph [0049] of the instant application. Additionally, and as is taught in that same paragraph, the idea that the markers might be prioritized is also discussed. As such, Claims 18 - 20 do not constitute new matter.

## CLAIM OBJECTIONS AND REJECTIONS

### Rejections Under 35 U.S.C. 103(a)

Claims 1-6, and 15-17 stand as rejected under 35 USC 103 (a) as being unpatentable over Foote et al. (U.S. Pat. No. 2003/0160944)) and Ubillos (U.S. Pat. No. 5,999,173).

Turning first to the case law on the matter, recall that the burden is on the *Examiner* to provide evidence of obviousness (emphasis added). See, *In re Fritch*, 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992):

**In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. . . .**"[The Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988).

Further, the Federal Circuit has mandated that a rejection under § 103(a) is only proper if there is a "teaching, suggestion, or incentive supporting the combination" relied upon. *In re Geiger*, 815 F.2d 868, 2 USPQ 2d 1276, 1278 (Fed. Cir. 1987).

It is said, that Foote teaches a method of aligning a video work with an audio work, wherein said audio and video works are configurable to be played in concert with each other. It is further said that Foote does not specifically teach automatically synchronizing said video transition with said selected audio marker by at least adjusting a time duration of said video transition, but that Ubillos teaches automatically synchronizing the video transition with the selected audio marker by adjusting a time duration of said video transition and that it would have been obvious to one of ordinary skill in the art at the time of the invention to include the teaching of Ubillos into the invention of Foote in order to allow a user to select special effects for

inclusion into the final music video. The applicant is directed to sections col. 8 lines 26-37, and col. 11 lines 35-50 of Ubillos in support of this premise.

Applicants respectfully disagree. The cited passages of Ubillos merely reflect the well-known fact that a transition effect can be used to smooth the changes between adjacent video clips and in no way suggests applicants' approach of using transitions to synchronize audio and video works. The Examiner indicates that the cited passage teaches "synchronizing said video transition with said selected audio marker by at least adjusting a time duration of said video transition, but that is, in applicants' view, simply not what this passages says. For example, the words "synchronize" and "sync" are nowhere to be found within the Foote reference. Thus, for at least this reason the instant rejection is believed to be improper and should be withdrawn.

Further, the combination of Ubillos and Foote does not yield applicants' invention of Claim 1 as-amended. Foote is concerned with the calculation of "transition" *points* in a multimedia work via a self-similarity analysis. Transition points in a video work are then matched up with transition points in an audio work. Nothing in Foote's algorithm suggests how to accommodate a variable length transition – Foote is exclusively focused on matching one *point* with another *point*. As such, it is believed that Ubillos as applied to Foote would be inoperable.

Still further, Foote is an automatic / algorithm driven method (i.e., "self-similarity") whereas Ubillos' approach is manual, e.g., manually selecting in / out points of a transition. As such, the combined Foote / Ubillos reference would be some combination of a manual selection of transition length with automatic pairing of transition *points*. Again, Foote's transition is a point in time – not a video effect. As such, it makes no sense to talk of combining Ubillos' manually modifiable video transition with the automatic synchronization of Foote.

Nowhere within Foote is there a teaching or suggestion regarding the selection, use and application of video transition effects inserted into a video work, wherein one or more of the parameters of these transition effects will be modified in order to synchronize the breaks in the video work with the “markers” in the audio work.

Of course, none of Foote’s embodiments disclose or suggest applicant’s method which involves placement of a transition effect at a detected video marker and synchronizing the video material to the audio material by changing the parameters of the transition effect, the length of the transition effect being one such parameter. Further, the Examiner has failed to provide a citation in Foote that supports his assertion that Foote discloses “selecting a video transition effect to apply at said selected video marker” and “automatically synchronizing said video transition effect with said selected audio marker” (Office Action at page 4).

Further, nowhere in Foote is there a description or suggestion of the step of “applying said synchronized video transition to said video work, by at least adjusting said video transition effect with said selected audio marker”. This is so because, among other reasons, Foote utilizes a different method of aligning his audio and video works: he lengthens or shortens the surrounding video works. He never selects a modifiable video transition effect in the sense of the instant invention, and furthermore never synchronizes this video transition effect to audio markers, and, finally, does not apply the video transition effect to the work.

Finally, applicant fully incorporates by reference and reiterates the arguments presented previously in applicants’ response to the Office Action of April 6, 2007. Including, without limitation, the argument that the term “transition” in Foote means a “transition point” in time or a marker location. Additionally, Foote’s “transitions” are never “applied” to the multimedia work

as is required by applicants and, indeed, such an application does not even make sense in Foote's disclosure.

As such, and further in view of the arguments advanced above, it is believed that the cited references fail to disclose each and every element of the instant invention instant rejection as set out in the Claims, as such the instant rejection under Section 103 of Claim 1 is improper and should be withdrawn.

Turning next to the rejection under Section 102 (e) of Claim 2, it is said that the modified Foote discloses a method according to Claim 1, wherein an audio criteria is selected and wherein the audio criteria at least comprises a rule for identifying change points within said audio work. The detected change points are said to identify the audio markers within said audio work.

In reply, applicant would note that neither Foote nor Ubillos – either alone or in combination – teaches applicant's approach to multimedia composition of audio and video material by automatically synchronizing a video transition effect with a selected audio marker by at least adjusting a time duration of said video transition effect. More specifically, Claim 2 calls for the limitations present in Claim 1 as-amended together with a further requirement that an audio criteria be used to obtain audio markers within the audio work.

As such it is believed that the cited reference fails to disclose each and every element of the instant invention as set out in Claim 2 and as such, the instant rejection under Section 103 is believed to be improper and should be withdrawn. Further, it is believed that Claim 2, depending as it does from a claim believed to be allowable, should for the same reasons be allowed.

With respect to Claim 3 for at least all of the reasons set out above, it is believed that this claim is allowable. It is said that the modified Foote discloses a method according to Claim 1, wherein a highest priority audio criterion is selected from among a plurality of audio criteria according to a priority order and wherein the highest priority audio criterion is used to identify specific change points in the audio work. The identified change points are set to identify the audio markers within said audio work.

Further, nowhere in Foote is it disclosed that a plurality of criteria might be used to identify audio markers – only “self-similarity” is taught in Foote. Thus, there is no teaching that multiple criteria might be used and prioritized, such that the audio markers would be selected based on the highest priority criterion.

As a consequence, it is believed that Claim 3, depending as it does from a claim believed to be allowable as-amended, and further in view of the arguments advanced above, is in condition for allowance, therefore it is believed that the instant objection of this claim should be withdrawn.

With respect to Claim 4, for at least all of the reasons set out above it is believed that this claim is allowable. However it is said that the modified Foote teaches a method according to Claim 1, wherein is provided a criterion for determining whether an audio marker is suitable for use with a selected video marker.

As has been discussed previously, the combination Foote / Ubillos does not disclose or suggest a method of aligning audio and video materials wherein only the length of a transition effect is modified as is required by Claim 1 as-amended. Thus, the combination does not teach

such a method of aligning audio and video materials as described above wherein further an audio marker is judged to be suitable for use with a selected video marker.

As a consequence, it is believed that Claim 4, depending as it does from a claim believed to be allowable as-amended and further in view of the arguments advanced above, is in condition for allowance and the instant objection of this claim should be withdrawn.

With respect to Claim 5, for at least all of the reasons set out above it is believed that this claim is allowable. However, it is said that the modified Foote in paragraph [0074] teaches the reading of said stored aligned video work from computer readable medium and playing said video work on a display device.

In reply, applicants would once again note that neither Foote nor Ubillos – either alone or in combination - disclose or teach applicant's approach to multimedia composition of audio and video material by automatically synchronizing a video transition effect with a selected audio marker by adjusting only the time duration of said video transition effect. Further, the cited passage in the modified Foote does not teach a method such as that described above wherein a multimedia work that has been created according to the instant method is read from a computer readable medium and played on a display device.

As a consequence, it is believed that Claim 5, depending as it does from a claim believed to be allowable and further in view of the arguments advanced above, is in condition for allowance and therefore the instant objection of this claim should be withdrawn.

With respect to Claim 6, for at least all of the reasons set out above it is believed that this claim is allowable. However, it is said that the modified Foote teaches the use of a computer



readable medium selected from the group consisting of computer RAM, non-volatile RAM, magnetic disk, a RAM card, optical disk, magneto-optical disk, and a floppy disk.

In reply, applicants would once again note that neither Foote nor Ubillos – either alone or in combination - discloses or teaches applicant’s approach to multimedia composition of audio and video material by automatically synchronizing a video transition effect with a selected audio marker by adjusting only the time duration of said video transition effect. Further, the cited passage in the modified Foote does not teach a method such as that described above wherein a multimedia work has been created according to the instant method and is stored on a computer readable medium selected from the group consisting of computer RAM, non-volatile RAM, magnetic disk, a RAM card, optical disk, magneto-optical disk, and a floppy disk.

As a consequence, it is believed that Claim 6, depending as it does from a claim believed to be allowable and further in view of the arguments advanced above, is in condition for allowance and the instant objection of this claim should be withdrawn.

Turning next to Claim 15, it is said that Foote teaches the method according to Claim 9, but does not specifically teach wherein step (d) comprises the steps of “(d1) selecting a video transition...” and wherein step (f) comprises the step of “(f1) synchronizing said video transition ...”

However, it is further said that Ubillos teaches, at col. 8, lines 26-37, col. 11, lines 35-50, that the “user can select video transition having starting time ‘in’ ending time ‘out’...” (p. 6, of the Office Action) and wherein step (f) comprises the step of “(f1) synchronizing said video transition with said selected audio marker by modifying ...”. Applicants are directed to Figure 3 and col. 8, lines 25-37, of Ubillos in support.

In reply, for at least all of the reasons identified above it is believed that the instant rejection is improper and should be withdrawn. More particularly, neither Foote nor Ubillos teaches – alone or in combination – applicants’ invention which synchronizes audio and video works by modifying only the time duration of a transition effect. Further, neither reference teaches or makes obvious a synchronization method wherein the transition effect has a starting time and an ending time and wherein at least one of the starting and ending time are modified in order to synchronize the audio and video works.

As such, it is believed that the instant rejection of Claim 15 is improper and should be withdrawn.

With respect to Claim 17, for at least all of the reasons set out above it is believed that this claim is allowable. However, it is said that the modified Foote teaches a method according to Claim 9, wherein said video transition effect is selected from a group consisting of a wipe, a fade, a cross fade, a zoom in, a zoom out, a push, an overlap, and an iris dilation.

In reply, for at least all of the reasons identified above it is believed that the instant rejection is improper and should be withdrawn. More particularly, neither Foote nor Ubillos teaches – alone or in combination – applicants’ invention which synchronizes audio and video works by modifying only the time duration of a transition effect. Further, neither reference teaches or makes obvious a synchronization method wherein the transition effect is selected from a group consisting of a wipe, a fade, etc.

As a consequence, it is believed that Claim 17, depending as it does from a claim believed to be allowable and further in view of the arguments advanced above, is in condition for allowance and the instant objection of this claim should be withdrawn.

### **Rejections Under 35 U.S.C. 102**

Claims 9-14 stand as rejected under 35 USC 102(e) as being anticipated by Foote et al. (Foote, USPN 21003/160944). It is said that, per Claim 9, Foote teaches a method of aligning a video work with an audio work, wherein the audio and video works are configurable to be played in concert. It is said that, among other things, Foote teaches applicants' step of synchronizing said video transition with said selected audio marker by modifying at least one of said selected transition parameters.

In reply, it should be noted that nowhere within Foote is there a teaching or suggestion that an audio and video work may be synchronized by modifying parameters associated with video transition effect as is required by Claim 9 as-amended. In more particular, Foote synchronizes a video and an audio work by adjusting the lengths of the component video clips and/or the timing between so-called "transition points" (i.e., points that correspond to changes in the character of the audio and/or video works). The instant application, though, takes an opposite approach: transitions effects are inserted at appropriate points in the video work and parameters of these effects are modified in order to cause the audio and video works to appear to be in sync. In one preferred embodiment, the lengths of those transition effects are adjusted in order to synchronize the video and audio works. In brief, Foote fails to disclose at least applicants' step (f) in Claim 9 as-amended. Thus, Foote does not disclose each and every element of Claim 9 set out as in the claim.

In view of the foregoing, applicants believe that the instant rejection of Claim 9 as amended should be withdrawn and this claim allowed to issue.

With respect to Claim 10, for at least all of the reasons set out above it is believed that this claim is allowable. However it is said that Foote in Paragraph [0074] teaches the writing of said aligned video work and said audio work to a computer readable medium.

In reply, applicants would once again note that Foote does not teach the writing of an aligned work to a computer readable medium, wherein the aligned work was obtained by modifying a parameter associated with a video effect as is required by Claim 9 as amended.

As a consequence, it is believed that Claim 10, depending as it does from a claim believed to be allowable and further in view of the arguments advanced above, is in condition for allowance and therefore the instant objection of this claim should be withdrawn.

With respect to Claim 11, for at least all of the reasons set out above it is believed that this claim is allowable. However, it is said that Foote teaches the use of a computer readable medium selected from a group consisting of computer RAM, non-volatile RAM, magnetic disk, a RAM card, optical disk, magneto-optical disk, and a floppy disk.

In reply, applicants would once again note that Foote does not disclose or teach the use of a computer readable medium such as computer RAM, etc., wherein the synchronized multimedia work that is written thereto is created by modifying at least one parameter of a video effect and applying the transition effect to the video work. Thus, the Examiner's citation of Foote does not teach each and every step of applicants' method, set out as in the claim.

As a consequence, it is believed that Claim 11, depending as it does from a claim believed to be allowable and further in view of the arguments advanced above, is in condition for allowance and the instant objection of this claim should be withdrawn.

Turning next to the rejection under Section 102 (e) of Claims **12-14**, it is said that these claims are rejected under the same rationale as Claims **2-4** respectively.

In reply, for at least all of the reasons indicated above, and in particular for those reasons indicated in connection with applicant's arguments for the allowability of Claims **2-4** above, it is believed that these claims are allowable.

In more particular, Claims **12-14** depend from Claim **9**, which is believed to be allowable, as-amended.

Further, Claims **12-14** require, by virtue of their dependence on Claim **9** as-amended, that a video transition effect be selected, that the selected transition effect be synchronized with an audio marker by adjusting at least one of its parameters, and that the synchronized video transition effect be applied to be video work. Nothing in Foote teaches or suggests this approach.

Thus, it is believed that because Foote fails to disclose each and every element of Claims **12-14** set out as in the claims, rejection of Claims **12-14** is improper and should be withdrawn.

#### **Discussion of New Claims 18 – 20**

For at least all of the reasons discussed above it is believed that Claims **18 - 20**, which are newly added by way of this amendment, are in condition for allowance and should be passed to issue.

In more particular, and as compared with Foote or Ubillos, Claims **18 - 20** require that selection be made – potentially at each video marker – from among a collection of audio markers that have been calculated according to a plurality of different criteria. Note that this approach is clearly different from anything in either of the above-identified references.

Consider, for example, that both Foote and Ubillos consistently use a *single criterion* for selecting all of their respective audio markers. This single criterion is utilized during the entire alignment process. However, applicants' Claims **18 - 20** require that a selection be made – potentially at each video marker – among several audio markers that have been obtained by different selection methodologies, the purpose of the selection being to identify those audio markers which are suitable for use with a video marker. Then, among those audio markers determined suitable (e.g., being within a particular time window or proximate to the chosen video marker), the instant method further selects a particular audio marker from among the candidates that is to be synchronized according to the established priority.

Thus, the resulting synchronized audio and video works will in all likelihood be based on some combination of markers that have been selected from the audio work according to multiple (different) prioritized criteria, rather than consisting of a synchronization that is based only on audio markers that have been chosen according to a single criterion as is taught in both Foote and Ubillos.

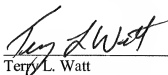
As such, it is believed that these claims has been clearly differentiated over the prior art and should be allowed to issue.

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In view of the foregoing, the applicants believe that the rejections and objections offered by the Examiner have been overcome and should be withdrawn. The claims as-filed are in

condition for allowance and should be passed to the issue branch. Early and favorable action is earnestly solicited.

Respectfully submitted,



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2/21/08

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